



Town of Chatham

Office of the Selectmen
Town Manager
549 Main Street
Chatham, MA 02633



Jill R. Goldsmith
TOWN MANAGER
jgoldsmith@chatham-ma.gov

Tel: (508) 945-5105
Fax: (508) 945-3550
www.chatham-ma.gov

June 29, 2017

The Honorable Ryan Zinke
Secretary, Department of the Interior
1849 C St., NW
Washington, DC 20240

RE: Monomoy National Wildlife Refuge Western Boundary

Dear Secretary Zinke:

I write on behalf of the Town of Chatham (Town), Massachusetts, to ask your personal intervention into a dispute initiated by the egregious and illegal taking by the U.S. Fish and Wildlife Service (Service) of submerged lands west of the Monomoy National Wildlife Refuge (Refuge). I understand the Congressman Keating's office plans to also reach out to you to discuss the same.

In the years before and after creation of the Refuge in 1944, the Commonwealth of Massachusetts and Town have sustainably managed fisheries, provided sensible public access, and exercised sound stewardship over the open waters and submerged lands west of Monomoy Island consistent with Refuge goals. These submerged lands and waters are critically important to our local fishermen and shell fishermen as they produce millions of dollars of sustainably managed seafood annually supporting hundreds of jobs.

Several years ago, when the Service was developing a Comprehensive Conservation Plan (CCP) for the Refuge, the Obama Administration *re-interpreted* the 1944 Declaration of Taking and claimed the Service owned and, therefore, controlled the submerged lands and overlying waters to the west. This claim is contrary to the 1944 Judgment on the Declaration of Taking, contrary to historical documents, and inconsistent with congressional intent. The Town has compiled multiple examples where the Service itself describes the Refuge as consisting of upland Monomoy Island (only). As recently as the 1988 Masterplan for the Refuge, the Service recognized they did not own the submerged lands.

The refuge boundary dispute with the Service is not about environmental concerns or proper stewardship of the area's natural resources. Indeed, for centuries the Commonwealth and Town

have done an exemplary job of protecting and managing the areas' fisheries and shellfish resources and we will continue to do so. The Town alone spends several million dollars annually funding those departments with responsibilities for protecting and managing natural resources and the public's use and enjoyment thereof. Regrettably the position of the Service ignores this commitment to the stewardship and sustainable use of the area's natural resources.

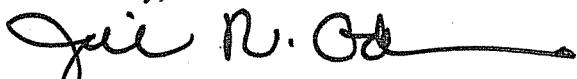
Mr. Secretary, legislation (H.R. 1157) to restore the Refuge's historically recognized western boundary (mean low water line) is pending before Congress, and the Massachusetts Attorney General is preparing to litigate this matter if necessary. But there is an easier and less costly way to correct this federal overreach. We are hopeful that under your leadership the Service will re-open the CPP to permanently restore the historic western boundary. This administrative remedy would avoid wasting taxpayer's dollars on needless litigation and would avoid creating legislative precedent.

The Monomoy National Wildlife Refuge is one of the Town's and Commonwealth's most spectacular natural treasures. For hundreds of years Cape Cod residents and visitors alike have enjoyed the natural beauty of Monomoy Island. Please come for a visit so that you can personally observe this beautiful seascape and the commitments we have to ensuring it remains beautiful for generations to come. We would be happy to host a meeting or make such arrangements with Congressman Keating's District office, and also work with Monomoy Refuge Manager Matthew Hillman to arrange a tour.

We are ready to meet with you or your staff at any time and would be pleased to provide whatever additional information you may require to re-open the CCP and correct this illegal taking.

Thank you in advance for your consideration. Should you have any questions regarding the foregoing, please contact me at jgoldsmith@chatham-ma.gov or 508.945.5105.

Sincerely,



Jill R. Goldsmith, Chatham Town Manager

cc: Rep. William Keating
Sen. Edward Markey
Sen. Elizabeth Warren
MA Gov. Charles Baker



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



JAN - 5 2018

In Reply Refer To:
FWS/R5/NWRS/066290

Ms. Jill R. Goldsmith
Chatham Town Manager
549 Main Street
Chatham, Massachusetts 02633

Dear Ms. Goldsmith:

Thank you for your letter of June 29, 2017, to Secretary of the Interior Zinke, regarding the western boundary and Comprehensive Conservation Plan (CCP) of Monomoy National Wildlife Refuge (NWR). We apologize for the delay in responding.

Your letter highlights the efforts that the Commonwealth of Massachusetts (Commonwealth) and the town of Chatham (Town) have taken to sustainably manage the fisheries within the 1944 Declaration of Taking (DT). In short, the U.S. Fish and Wildlife Service (Service) agrees, and the CCP continues, with an approach that facilitates this mutual cooperation.

Your letter also discusses disagreement between the Town and the Service regarding the western boundary of Monomoy NWR. However, the CCP did not re-interpret the western boundary, but rather found a flexible approach to managing the resources in the submerged lands and waters recognizing the boundary as outlined in the 1944 DT. We have carefully considered the question of Service jurisdiction over submerged lands and waters within the refuge's western boundary. We have concluded that the refuge is bounded by mean low water on the eastern side, and by a fixed boundary that includes submerged lands and waters within a western boundary defined by the 1944 Declaration of Taking.

The original DT language includes a written description of the western boundary, which is defined by fixed latitude/longitude coordinates, and includes descriptions of uplands, intertidal flats, and submerged ocean waters. It states the land was acquired "...together with all accretion and reliction and all and singular water and riparian rights and other rights, tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, vested in the United States of America..." The original DT document includes a map generally outlining those "exterior limits" and describing them as the "Limits of Area to be Taken."

The National Wildlife Refuge System Chief's approval memo and map (1938), the Service's Development Plan for the proposed refuge (Salyer II 1941), and a biological assessment report

Ms. Jill R. Goldsmith

2

(1929), include the biological justifications for acquiring the upland, tidal, and open waters within these exterior limits. The 1938 map was initially used to develop the outline for the "Limits of Area to be Taken." We also acknowledge that active regulation by the Service of submerged and tidal lands has been limited; however, the authority to regulate by the Service has never been relinquished.

Recognizing this disagreement, we have also offered to enter into a Memorandum of Understanding (MOU) with the Town and the Commonwealth to cooperatively manage these resources. We value the cooperative working relationship between the Commonwealth, the Town, and the Service.

The Service agrees that Monomoy NWR is a spectacular natural treasure and we remain committed to working with the Town and the Commonwealth. We would be pleased to work with you to seek a visit with the Secretary and the Congressman. We look forward to our continued work together to manage and conserve Monomoy NWR for the benefit of the American people.

If you have any questions, or if we can help in any way, please feel free to contact Mr. Scott Kahan, the Service's Regional Chief, National Wildlife Refuge System, at 413-253-8245 or scott_kahan@fws.gov.

Sincerely,



Wendi Weber
Northeast Regional Director